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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/185,994 03/31/94 GARDNER

M CU1108TFP

DAWSON, G EXAMINER

33M1/0720

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ART UNIT PAPER NUMBER

3309

DATE MAILED: 07/20/94

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on \_\_\_\_\_ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), \_\_\_\_\_ days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

**Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:**

- |   |  |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input checked="" type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.                 | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152.                  |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474.     | 6. <input type="checkbox"/> _____  |

**Part II SUMMARY OF ACTION**

1. ☒ Claims 1-8 are pending in the application.  
Of the above, claims \_\_\_\_\_ are withdrawn from consideration.
2. ☐ Claims \_\_\_\_\_ have been cancelled.
3. ☐ Claims \_\_\_\_\_ are allowed.
4. ☒ Claims 1-8 are rejected.
5. ☐ Claims \_\_\_\_\_ are objected to.
6. ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.
7. ☒ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed \_\_\_\_\_, has been ☐ approved; ☐ disapproved (see explanation).
12. ☒ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received  
☒ been filed in parent application, serial no. 239,223; filed on 7/31/92.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

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The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C. § 112, first paragraph, as failing to provide an adequate written description of the invention and how to make and or use it.

It is unclear what causes the driving means to automatically pivot to the spent position after removal of the tag engagement means from the ear tag and ear.

Claims 2-7 are rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in the objection to the specification.

Claims 1-8 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, "extending into or being attached to" is an alternate expression involving non-equivalents. It is unclear what the driving means is pivotally connected to. There is no clear antecedent basis for "the first jaw member".

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In claim 2, There is no clear antecedent basis for "the load" and "the point of pivot". The location of the load is unclear. The pivoting of the tag engager can be caused by one of two possible, unequivalent alternatives.

In claim 3, There is no clear antecedent basis for "its first position", "the upper and lower jaw means" and "the same axis".

Claim 8 is not in proper form as it appears to be a claim drafted for a design patent application.

Claims 4-7 are objected to under 37 C.F.R. § 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only and cannot depend from any other multiple dependent claim. See M.P.E.P. § 608.01(n). Accordingly, claims 4-7 have not been further treated on the merits.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. § 102(b) as being anticipated by any one of the following: LEFEBVRE-'221, FILMER-'320, GARDNER-'147, GARDNER-'639 and FILMER-'735. Each of these references disclose an ear tag applicator having pivoted handles

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and jaws and a pivotal attachment of the tag engagement means to one end of one of the jaws.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Glenn Dawson at telephone number (703) 308-4304. Examiner Dawson can normally be reached on Monday through Thursday from 7:00 AM to 5:30 PM, Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, examiner Dawson's supervisor, Steve Pellegrino, can be reached at (703) 308-0871. The fax number for Group 3300 is (703) 305-3590 or 3591.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group 3300 receptionist at (703) 308-0858.

*GKD*  
GKD  
July 8, 1994

  
Stephen C. Pellegrino  
Supervisory Patent Examiner  
Group 330